

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO. 2989 OF 1996

Coram : B.C. Patel & R.R. Jain, JJ.

10th July, 1996

Oral Order :

Petitioners by filing this petition have prayed for an appropriate writ restraining the respondent Nos. 1, 2 and 3 from taking possession of Survey Nos. 121/1, 121/2, 121/3 and 121/5 covered under notification dated 12th June, 1989 issued under the provisions of Land Acquisition Act, 1894 (hereinafter referred to as "the Act") till possession of lands shown at Sr.No. 22 to 32 of the award is taken.

2. The lands situated at Village Moti Mahudi, Taluka Dhanera, District Banaskantha were the subject matter of the acquisition. Notification under Sec. 4 was published in accordance with law and thereafter, under Sec. 6 of the Act. It appears that the land holders consented for an award for which there is a reference in the award. The award is not challenged before this Court. The grievance of the petitioners is that the respondents are acting arbitrarily and with mala fides since they are not taking possession of the lands which is subject matter of award as it belongs to the influential persons of the village. According to the petitioners, they are elected members of the Panchayat and one is Sarpanch. It is also requested by the petitioners that the respondents should be restrained from taking possession as the purpose is changed without previous sanction of the State Government. Section 17-A of the Act as applicable to the State of Gujarat inserted vide Gujarat Act 20 of 1965 reads as under :-

"17-A. Use of land for any public purpose permitted.- When any land vests in the State Government or in a corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful with the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken."

3. On behalf of the respondents, documents are placed on the record. Reading letter dated 21.3.1992

addressed by Executive Engineer, Palanpur to Executive Engineer, Sipu Dam, Dantiwada pointing out that certain survey numbers are not to be acquired, but it also appears that some of the survey numbers are to be used for a different purpose than for which the lands were acquired. For the purpose of this change which is sought for, a proposal is required to be forwarded to the Revenue Department clearly indicating that which survey numbers are required to be used for the purpose other than that for which lands were acquired. The letter which is placed on record indicates that the proposal for sanction as required is forwarded in view of sec. 17 A of the Act. Learned AGP-Mrs P.S. Parmar, after taking instructions from the Officers who are present before this Court, has fairly stated that the sanction is not granted, but the sanction is awaited. Under Sec.17-A it is clear that the lands cannot be used for other purpose than for which the lands were acquired.

4. There is a dispute with regard to the possession of the land. The petitioners state that the possession is not taken by the respondents. On behalf of the respondents, it is stated that the possession is taken. It is clear that the lands were with the petitioners and without previous sanction the possession was taken. Reliance is placed on the rojkam by the respondents. The respondent No. 3 is the Deputy Executive Engineer. It is surprising that he has called 2 panches for preparing the rojkam for taking possession in absence of petitioners. There is nothing to indicate on the record that notices were issued to these petitioners before taking possession and that they were not remaining present. If the case of the respondents is that the petitioners did not remain present for handing over the possession, then the matter stands on a different footing. We have indicated that the proposal was pending for obtaining sanction under Sec. 17-A then what prompted to act in this manner is not made clear. It is not the case that the lands were immediately required on 27.2.1996 for the purpose of the State. Then, in such cases, when there is no urgent need, we fail to understand that why without giving notices to the owners, the Deputy Executive Engineer has snatched the possession ? In view of what is stated above, it can be said that merely a document is prepared to show that the possession is handed over. In absence of the owners how the possession could have been taken when there is nothing to indicate that they have not cared to remain present inspite of notices being served. Under the circumstances, that rojkam cannot be acted upon. It appears that the claim of the petitioners that they are

in possession seems to be a correct view.

5. In the result, this petition stands rejected with the observations made hereinabove and the lands shall be used for the purpose for which it was acquired save and except with the previous sanction of the Government. However, the respondents will be a liberty to take possession in accordance with law. A sum of Rs.2,000/which is already deposited in this Court by the petitioners is directed to be deposited in the Legal Aid Committee. Notice discharged.

Sd/-

(B.C. Patel, J.)

Sd/-

10th July, 1996. (R.R. Jain, J.)